

**Deposition Designations for:  
WILLIAM J. HAGERTY  
January 12, 2000**

**Deposition Designation Key**

**Arrowood = Arrowood Indem. Co.  
f/k/a Royal Indem. Co. (Light Green)**

**BNSF = BNSF Railway Co. (Pink)**

**Certain Plan Objectors "CPO" = Government Employees Insurance Co.; Republic Insurance Co.  
n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance  
Co.; Fireman's Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurtà; and Allianz  
SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich  
International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and  
related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal  
Belge SA (Orange)**

**CNA = Continental Cas. Co & Continental Ins. Co. (Red)**

**FFIC = Fireman Funds Ins. Co. (Green)**

**FFIC SC = Fireman Funds Ins. Co. "Surety Claims" (Green)**

**GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.**

**Libby = Libby Claimants (Black)**

**OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)**

**PP = Plan Proponents (Blue)**

**Montana = State of Montana (Magenta)**

**Travelers = Travelers Cas. and Surety Cos. (Purple)**

**UCC & BLG = Unsecured Creditors' Committee & Bank Lenders Group (Lavender)**

**AFNE = Assume Fact Not in  
Evidence**  
**AO = Attorney Objection**  
**BE = Best Evidence**  
**Cum. = Cumulative**  
**Ctr = Counter Designation**  
**Ctr-Ctr = Counter-Counter**  
**ET = Expert Testimony**  
**F = Foundation**  
**408 = Violation of FRE 408**  
**H = Hearsay**  
**IH - Incomplete Hypothetical**

**L = Leading**  
**LA = Legal Argument**  
**LC = Legal Conclusion**  
**LPK - Lacks Personal Knowledge**  
**LO = Seeking Legal Opinion**  
**NT = Not Testimony**  
**Obj: = Objection**  
**R = Relevance**  
**S = Speculative**  
**UP = Unfairly Prejudicial under Rule 403**  
**V = Vague**

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF MONTANA  
3                   MISSOULA DIVISION

4                   WILLIAM J. HAGERTY and JEANNETTE      )  
5                   HAGERTY, husband and wife,              ) Cause No.  
6                   Plaintiffs,                              ) CV-99-116-M-DWM  
7                   vs   )  
8                   W.R. GRACE & CO.-Conn, a              )  
9                   Connecticut corporation, W.R.        )  
10                  GRACE & CO., a Delaware              )  
11                  corporation, W.R. GRACE, a/k/a        )  
12                  GRACE, an association of              )  
13                  business entities, MONTANA            )  
14                  VERMICULITE COMPANY, a Montana      )  
15                  corporation (dissolved), BENITA        )  
16                  LOVICK, Personal Representative     )  
17                  for the ESTATE OF EARL D. LOVICK    )  
18                  DECEASED, and DOES I-IV,             )  
19                  Defendants.                             )  
20                  

21                  

16                  VIDEO DEPOSITION  
17                  OF  
18                  WILLIAM J. HAGERTY  
19                  (On Behalf of the Plaintiffs)

20                  Taken at the Offices of  
21                  Hedman, Asa & Gilman Reporting  
22                  947 South Main  
23                  Kalispell, Montana  
24                  Wednesday, January 12, 2000  
25                  10:19 a.m.

24                  Reported by Debra M. Hedman, RPR, RMR, and Notary  
25                  Public for the State of Montana, Flathead County.

1 Q What do you mean it was wet?

2 A Well, in any case, like when they would  
3 blast and there was any sign of dust, they would  
4 immediately turn the water on and sprinkle  
5 everything down.

6 Q How long did you stay in Butte?

7 A Until 1946.

8 Q And then what happened in 1946?

9 A We moved up to -- Well, I was suppose to  
10 come up to Hungry Horse Dam and start that job in  
11 1946, and the union wouldn't accept my transfer, so  
12 we decided to go up to Libby.

13 Q Why did you chose to go to Libby?

14 A Jeannette's folks were living there at the  
15 time, and I knew that Zonolite was expanding rapidly  
16 there so I got a job with Zonolite.

Libby

17 Q Do you remember how long you worked for  
18 Zonolite?

19 A Two years on the regular job.

20 Q Do you remember the dates of that  
21 approximately?

22 A The dates?

23 Q Do you remember the dates that you worked  
24 at Zonolite, that two years?

25 A 1946 and '47, and I -- And probably the

Libby

[ ]

1 winter of '48 and '49 at different jobs.

2 Q After you left Zonolite, what did you do?

3 A I went to work for J. Neils Lumber  
4 Company.

5 Q What kind of work did you do for J. Neils?

6 A Operating cranes and power shovels.

7 Q Did you ever own your own company?

8 A Yes, that was just briefly in between  
9 Zonolite and when I went to work for J. Neils.

10 Q What kind of company was that?

11 A It was an excavating company. We had a  
12 crane and a shovel and a couple of dump trucks.

13 Q How big was your company?

14 A Just my partner and I operated it  
15 ourselves.

16 Q How long did you stay and work at  
17 J. Neils?

18 A Twenty-four years.

19 Q Did you eventually get promoted?

20 A Yes.

21 Q What was your promotion to?

22 A After about four years operating cranes  
23 and shovels and so forth, I was in charge of the --  
24 they were expanding rapidly and they had lots of  
25 cranes working and I was in charge of those and,

1 A Well, that was probably 1980.

2 Q Why did you eventually retire?

3 A I don't know. I just -- just got tired of  
4 it, I guess. I just had enough.

5 Q Okay. And have you lived in Libby from  
6 the time that you moved there in 1946 --

7 A Yes.

8 Q -- through your retirement now?

9 A Yes.

Libby

10 Q I want to talk now specifically about the  
11 time that you worked at Zonolite. Why did you go to  
12 work at Zonolite?

13 A Well, we went up to visit the wife's  
14 family and I understood that Zonolite was expanding  
15 and needed some help, so I got a job on running one  
16 of the power shovels.

17 Q Was your wife's family associated with  
18 Zonolite?

19 A Were they?

20 Q Yes.

21 A No.

22 Q Do you remember who hired you?

23 A Carlton Jouquin.

24 Q Did you have to interview or apply to work  
25 there?

1 A Did I what?

2 Q Did you have to interview or apply to work  
3 there?

4 A Yes, I interviewed with John Baggs, the  
5 line foreman.

6 Q And was he your supervisor?

7 A Yes.

Libby [redacted]  
8 Q You mentioned that you were a shovel  
9 operator. Can you tell us what that job consisted  
10 of.

11 A It was mostly loading ore into dump trucks  
12 that would haul that ore to the mill or to the waste  
13 dump, whichever.

14 Q And were you in the pit?

15 A Yes.

16 Q I'm going to show you this exhibit. It's  
17 marked 2-8. And again, if I can have you hold that  
18 up for the camera real briefly.

19 A (Deponent complied.)

20 Q Is that the shovel?

21 A That's the first shovel I operated there  
22 for Zonolite.

23 Q I'm going to show you the second one,  
24 which is marked 2-7. And did you also operate that  
25 shovel? Can you show it to the camera, too, as

1 you're looking at it?

2 A Yes. That's the second one that I  
3 operated.

4 Q Okay. Thank you. Now, I see on  
5 Exhibit 2-8 there that the shovel is dumping into  
6 the truck.

7 A Yes.

8 Q Is that the work that you did?

9 A Yes, that's the ore.

Libby

10 Q Was it dusty -- You can put the photo  
11 down. Was it dusty when you loaded the trucks?

12 A Oh, in the summertime it was. Yes.

13 Q Why was that?

14 A And weather like that it was dusty. The  
15 trucks operating in the pit, running around the pit,  
16 would kick up a lot of dust in the dry weather.

17 Q When you were operating the shovel and  
18 loading the trucks, did you know what you were  
19 loading?

20 A Well, yes. Zonolite -- or, vermiculite  
21 ore is all I really knew.

22 Q Did you tell the driver what you were  
23 loading his truck with?

24 A Yes, between the waste and the ore, we  
25 would have to tell the driver.

Libby

1 Q Did what you tell the driver determine  
2 where the driver went with his load?

3 A Yes.

4 Q Did you know what you were loading by the  
5 actual names of the minerals?

6 A I knew the difference between vermiculite  
7 and biotite. Other than that, I didn't know  
8 anything about the ore.

9 Q Do you remember knowing about asbestos?

10 A Oh, yes. We didn't know anything about  
11 it. Just our curiosity, when you would see a piece  
12 of it.

13 Q Could you tell the biotite from the  
14 vermiculite from the asbestos when you looked at  
15 it --

16 A Oh, yes.

17 Q -- in the pit?

18 A Different color, yes.

19 Q And how did you know that?

20 A The vermiculite was an entirely different  
21 color, gray mostly and brown; and the biotite was  
22 jet black and hard; and the asbestos was white.

23 Q And how did you know what those minerals  
24 were? Had you been instructed on what the minerals  
25 looked like?

Libby

1           A     The supervisor told me, so I would know if  
2       they had an order for straight vermiculite, we would  
3       move to that part of the pit. If they wanted  
4       biotite, that was in another part of the pit.

5           Q     Was that John Baggs?

6           A     Yes.

7           Q     And I assume that was at the time you  
8       started working?

9           A     Yes.

10          Q     Did you receive any other training when  
11       you started at Zonolite? Any safety training or  
12       anything like that?

13          A     No.

14          Q     As the shovel operator, were you the  
15       person who was responsible for deciding what was ore  
16       and what was waste?

17          A     Yes.

18          Q     So nobody else told the truck drivers  
19       whether they should go to the dump or --

20          A     No, it was the shovel operator's  
21       responsibility.

22          Q     In making your decisions about whether  
23       something was waste or ore, you followed the  
24       instructions that John Baggs had given you?

25          A     Yes.

Libby

1 Q Did the minerals appear -- Did they show  
2 up in the side of the face differently?

3 A Yes.

4 Q What do you remember about that?

5 A The vermiculite was shiny and very -- very  
6 slippery. The vermiculite ore was. And the waste  
7 ore was more like dirt. It had vermiculite in it,  
8 but --

9 Q Do you remember how big some of the  
10 different deposits were? Was one mineral more  
11 common --

12 A Oh, yes, the vermiculite was more common  
13 than anything else.

14 Q What do you remember about the asbestos  
15 when you were loading the ore?

16 A Well, all I remember about it was my  
17 curiosity, when I first saw it there and wondered  
18 what the white stuff was. And they never gave us  
19 any instructions about what to do with it, so it  
20 just went in with the waste mostly. And I remember  
21 asking what it was, and they said it was just  
22 asbestos waste.

23 Q Did the asbestos appear more commonly in  
24 the vermiculite or on its own or do you remember  
25 anything about that?

Libby

1 A No, I don't remember how it was  
2 distributed through the stuff, but it was --

3 Q So you weren't instructed to do anything  
4 different when you came across an asbestos deposit?

5 A No, just throw it in the waste or whatever  
6 was handy.

7 Q Okay. Did you know anything more about  
8 the minerals other than their names and what they  
9 looked like?

10 A No.

11 Q Did you know that asbestos was a hazardous  
12 mineral?

13 A No.

14 Q Now, after you were a shovel operator for  
15 those two years that you mentioned before, did you  
16 do any other kind of work at Zonolite?

17 A I worked in the mill in the wintertime.

18 Q And how did that happen?

19 A After I quit running shovel and went  
20 into partnership for -- on our own, with Floyd  
21 Blackwell -- Connie Blackwell, my partner, we had a  
22 chance to go up there and work inside in the  
23 wintertime in the mill for a couple months there in  
24 the cold weather. So that's how we got in there.

25 Q Did either you or your partner know

1       somebody at Zonolite that helped that happened?

2           A     Yes, Carlton Jouquin. He got us a job in  
3       there for the winter months.

Libby

4           Q     So it was temporary work?

5           A     Yes.

6           Q     And this was right after you stopped  
7       working at Zonolite as a shovel operator?

8           A     Yes.

9           Q     Did you work full 40-hour work weeks when  
10      you did --

11       A     In the mill, yes.

12       Q     All total, can you guess how many weeks or  
13      months you would have done that kind of work?

14       A     Probably six or seven weeks for two  
15      winters.

16       Q     Can you describe more specifically the  
17      work that you did in the mill?

18       A     The ore was coming in on a conveyor belt.  
19      and it was our responsibility to keep that -- it  
20      would fall off of the conveyor belt onto the floor,  
21      and we would pick up those pieces of ore and put  
22      them back on the conveyor belt. And the dust was  
23      coming in from the other parts of the mill and it  
24      was our responsibility to keep that swept up and we  
25      just put it back on the belt.

Libby

1 A Yes.

2 Q Do you remember whether that kind of work  
3 was dusty?

4 A Oh, yes.

5 Q What do you remember about the dust?

6 A Everything we touched had coating -- a  
7 thick coating of dust. And, like, I remember  
8 distinctly the stairways and the ladders, you had to  
9 brush the dust off to go from one floor to another,  
10 for any reason, which we very seldom did, but -- And  
11 then the floor where we worked there, there was dust  
12 coming in from the other parts of the mill and we  
13 had to sweep that up.

14 Q Could you see dust in the air?

15 A Oh, yes.

16 Q How thick was the dust on the floor?

17 A Oh, up to an inch.

18 Q And was there a new layer of dust every  
19 day?

20 A Yes.

21 Q Do you remember seeing dust come out of  
22 the mill? And if you want --

23 A Yes.

24 Q -- you can use that exhibit.

25 A Yes. I remember seeing that on the other

Libby

1 side of the mill as well, but -- this side and that  
2 side coming out. I didn't realize what it was, but  
3 you could see those coming out those blowers.

4 Q Thank you. Did you ever work with any of  
5 the other workers in the mill?

6 A No.

7 Q Did you work with your partner?

8 A Just my partner.

9 Q Did you ever talk with anyone about the  
10 dust?

11 A No.

12 Q When you were hired at Zonolite, did the  
13 company warn you that exposure to the dust could be  
14 harmful to you?

15 A No.

16 Q When you were hired at Zonolite, did the  
17 company warn you that exposure to asbestos could be  
18 harmful to you?

19 A No.

20 Q When you were hired at Zonolite, did any  
21 of the other workers warn you about the dust or the  
22 asbestos?

23 A No.

24 Q Did you ever see any signs about the  
25 hazards of asbestos or the dust?

Libby

1 A No.

2 Q Did your supervisors ever warn you the  
3 dust could harm you?

4 A NO.

5 Q Do you remember other workers talking  
6 about the dust when you worked there?

7 A Yes, but just that it was annoying mostly.

8 Q Did you or any of the other workers ever  
9 complain about the dust?

10 A No.

11 Q When you worked in the mill, on a  
12 temporary basis, were you ever warned about the dust  
13 or asbestos?

14 A No.

15 Q At the time that you worked at Zonolite,  
16 did you know that asbestos was hazardous?

17 A No.

18 Q Were you aware when you worked at Zonolite  
19 that other workers were developing illnesses from  
20 the dust?

21 A No.

22 MR. BERKOFF: I'll object.

23 BY MR. LACEY:

24 Q Did you belong to the union when you  
25 worked at Zonolite?

1 A Yes.

2 Q How can you tell?

3 A The things that I am unable to do anymore.

4 I just couldn't -- I couldn't do the things I had  
5 been doing up until that time.

Libby

6 Q Did you eventually go see a lung  
7 specialist?

8 A Yes.

9 Q Who did you go see?

10 A Dr. Whitehouse.

11 Q What's your understanding about  
12 Dr. Whitehouse's specialty?

13 A I understand he is an expert in his field  
14 of -- What do you call it? -- pull -- pulmonary,  
15 something or rather there.

16 Q That's good enough. Do you remember when  
17 you first went to go see Dr. Whitehouse?

18 A Probably a year and a half ago.

19 Q Do you recall the tests that  
20 Dr. Whitehouse did on you?

21 A He put me -- They put me in one of those  
22 breather machines, those plastic -- they have a name  
23 for it -- a bubble or something. Put me in there  
24 and took breathing tests for about an hour.

25 Q Did you have an x-ray?

Libby

1 A And then I had an x-ray.  
2 Q Did you discuss the results of those tests  
3 with Dr. Whitehouse?

4 A Yes.

5 Q After having that discussion with him,  
6 what was your understanding about what was causing  
7 your breathing problems?

8 A He took me in the room there and showed me  
9 the x-ray and he pointed out that it was asbestos in  
10 my lungs.

11 Q And you saw that on your x-ray?

12 A Yes.

13 Q Before Dr. Whitehouse, had any of your  
14 other doctors ever told you that you had an asbestos  
15 problem?

16 A No.

17 Q Do you have an understanding about what  
18 condition the asbestos has created in your lungs?

19 A Yes.

20 Q What do you understand about that?

21 A Just the fact that those deposits in there  
22 keep me from breathing freely, and from talking to  
23 the doctors -- the two doctors, that's what I  
24 gathered was my problem.

25 Q Aside from the time that you worked at

Arrowood  
Obj:  
H;F

Arrowood  
Obj:  
F

Libby

1        Zonolite, did you ever work with asbestos at any  
2        other time in your life?

3        A      No.

4        Q      Did Dr. Whitehouse give you medication for  
5        your asbestos problem?

6        A      No.

7        Q      Did he give you any inhalers or --

8        A      He recommended going ahead with an inhaler  
9        and using one of the compressed air ones, the larger  
10      machine.

11      Q      Would that have been a nebulizer?

12      A      Yes.

13      Q      And did those things help you?

14      A      Yes.

15      Q      Have you noticed that your breathing has  
16      continued to get worse since you first met with  
17      Dr. Whitehouse?

18      A      Yes. In fact I had to go back to him.

19      Q      When was the last time that you saw him?

20      A      It would have been about November 1st.

21      Q      Did you have more tests done on your lungs  
22      then?

23      A      Yes.

24      Q      Do you recall whether those tests showed  
25      that your asbestos problem was getting worse?

ARROW AND  
OBJ..  
F

Libby

1 A Yes, he said it definitely was worse.

2 Q Do you recall having a pulmonary function

3 test done?

4 A Yes.

5 Q And what do you remember about that?

6 A The girls that gave me the test in the

7 breather machine there said that my -- from their

8 last report, it -- I had lost a considerable amount

9 of my breathing capacity, the test showed. And then

10 Dr. Whitehouse took another x-ray, of course.

11 Q Did you have any special procedures done

12 when you saw Dr. Whitehouse this most recent time?

13 A What was the last?

14 Q Did you have any special procedures done

15 when you went to see Dr. Whitehouse in November?

16 A No, just the breathing test and the x-rays

17 and he found something on -- Do you want me to go on

18 with that?

19 Q Yes, please.

20 A He took me in again and pointed out on the

21 x-ray that there was something on the lungs there.

22 And he said it could be a tumor, but we're going to

23 have to check into it further.

24 Q And did you undergo more tests to decide

25 whether it was a tumor?

*Arrowood  
OBY..P*

Libby

1 A Yes, he sent me over to Deaconess Hospital  
2 and they put me in the CAT scan there and took some  
3 lab tests and gave me an intravenous while they were  
4 doing so.

5 Q Was it a tumor?

6 A It wasn't a tumor, it was fluid. Turned  
7 out to be.

8 Q And what did they do about the fluid?

9 A They had to go in my back and remove that  
10 fluid.

11 Q Did you understand that that was a serious  
12 problem?

13 A Yes.

14 Q How could you tell?

15 A Well, all the doctors I talked to --  
16 Dr. Whitehouse later, a little bit, and the doctor  
17 that took that fluid off, said it was a very  
18 important thing to keep a close check on. He said,  
19 You're going to have to have this done periodically  
20 maybe from now on. So if you run short of breath,  
21 considerably worse than it is now, well, get in  
22 touch with us and we will have to do this over  
23 again, probably.

24 Q Do you know whether that fluid on your  
25 lungs was as a result of the asbestos in your lungs?

ARROWOOD  
OBJ:  
H

ARROWOOD  
OBJ: H; F

Libby

1 A No, I couldn't say that. Just -- In  
2 talking to Dr. Whitehouse later, that's what he  
3 said, that it was probably from that.

4 Q Have you discussed with Dr. Whitehouse the  
5 future course that your asbestos disease is going to  
6 take?

7 A He just told me that it was probably going  
8 to get worse and that I would have to take close  
9 check on it and when my breathing got to the point  
10 where it was necessary, I would come in again.

11 Q Have you talked with Dr. Whitehouse or any  
12 other doctor about the potential need to go on  
13 oxygen at some point?

14 A No.

15 Q Okay. Would you say that you have been  
16 quite healthy for most of your life?

17 A Yes.

18 Q Have you ever been over weight?

19 A No.

20 Q Have you ever had any major surgeries?

21 A Just -- Yes, I had foot surgery from an  
22 injury and I had gallbladder surgery.

23 Q When was that gallbladder surgery?

24 A 1965.

25 Q And other than your foot, you haven't had

ARROWOOD  
OBJ.  
H;F